

UNITED STATES DISTRICT COURT
Northern District of California

RAYMOND J. CASTAIN,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Defendant.

No. C 11-1816 MEJ

ORDER DISMISSING CASE

On April 14, 2011, Plaintiff Raymond Castain filed the above-captioned complaint, as well as an application to proceed in forma pauperis. On May 31, 2011, the Plaintiff filed his consent to proceed before the undersigned magistrate judge. Dkt. No. 8.

On February 7, 2012, the Court granted Marc Kalagian's Motion to Withdraw as Attorney of Record for Plaintiff Raymond Castain. Dkt. No. 25. Pursuant to the Court's order, Mr. Kalagian sent Plaintiff a copy of the order and a joint statement acknowledging receipt of the order via certified return receipt. Dkt. No. 26. Although Plaintiff signed for this letter on February 13, 2012, he did not return the joint statement to Mr. Kalagian for filing. *Id.*, Ex. 2. On February 23, 2012, the Court issued a notice to Plaintiff that it was satisfied that he had received notice of Mr. Kalagian's withdrawal and that the case would proceed on the merits. Dkt. No. 27. The Court ordered Plaintiff to serve and file a motion for summary judgment or for remand by March 20, 2012. *Id.* Plaintiff has failed to comply with this deadline. Accordingly, the Court ordered Plaintiff Raymond Castain to show cause why this case should not be dismissed for failure to prosecute and failure to comply with court deadlines. Dkt. No. 28. The Court ordered Plaintiff to file a declaration by May 3, 2012, and scheduled a hearing on May 17, 2012. The Court warned Plaintiff that it may dismiss the case if he failed to respond. As Plaintiff has failed to respond and failed to appear at the May 17 hearing, the

1 Court finds it appropriate to dismiss this case pursuant to Federal Rule of Civil Procedure 41(b).

2 Under Rule 41(b), failure to comply with a court order can warrant dismissal. *See Ferdik v.*
3 *Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). In “determining whether to dismiss a case for failure
4 to comply with a court order, the district court must weigh five factors including ‘(1) the public’s
5 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk
6 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
7 (5) the availability of less drastic alternatives.’” *Id.* at 1260-61 (quoting *Thompson v. Housing Auth.*,
8 782 F.2d 829, 831 (9th Cir. 1986)). Here, Plaintiff failed to comply with Court orders and deadlines,
9 failed to respond to the order to show cause, and made no appearance at the May 17 hearing. Thus,
10 the Court finds that the *Ferdik* factors weigh in favor of dismissal.

11 Accordingly, the Court hereby DISMISSES this case for failure to prosecute and failure to
12 comply with the Court's deadlines and orders.

13 **IT IS SO ORDERED.**

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15 Dated: May 22, 2012

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18 Maria-Elena James
19 Chief United States Magistrate Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND J. CASTAIN,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Defendant.

Case Number: 11-01816 MEJ

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 22, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Raymond J. Castain
21095 Gary Drive, Apt.106
Hayward, CA 94546

Dated: May 22, 2012

Richard W. Wieking, Clerk
By: Rose Maher, Deputy Clerk